



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 393 and 396

[Docket No. FMCSA-2019-0211]

RIN 2126-AC31

Parts and Accessories Necessary for Safe Operation; Rear Impact Guards and Rear Impact Protection

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to include rear impact guards on the list of items that must be examined as part of the required annual inspection for each commercial motor vehicle (CMV). In addition, FMCSA amends the labeling requirements for rear impact guards, and excludes road construction controlled (RCC) horizontal discharge trailers from the rear impact guard requirements, consistent with changes made by the National Highway Traffic Safety Administration (NHTSA) to the corresponding Federal Motor Vehicle Safety Standards (FMVSS). This final rule responds to rulemaking petitions, as well as a recommendation from the Government Accountability Office (GAO).

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Luke Loy, Vehicle and Roadside Operations, Office of Carrier, Driver, and Vehicle Safety, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, (202) 366-0676, luke.loy@dot.gov. If you

have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

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I. AVAILABILITY OF RULEMAKING DOCUMENTS

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2019-0211/document> and choose the document to review. To view comments, click this final rule, and click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. EXECUTIVE SUMMARY

Section 393.86 of the FMCSRs, “Rear impact guards and rear end protection,” requires rear impact guards to be installed on most CMVs to reduce the incidence of passenger compartment intrusion during underride crashes in which a passenger vehicle strikes the rear of the CMV. Regulations requiring rear impact guards have been in the FMCSRs since 1952. The FMCSRs require that all CMVs be systematically inspected, repaired, and maintained to ensure that all required parts and accessories—including rear impact guards—are in safe and proper operating condition at all times (§ 396.3(a)(1)). Operation of a CMV with a missing or noncompliant rear impact guard is a violation of the FMCSRs.

Every CMV must be inspected at least once every 12 months. 49 CFR 396.17. A motor carrier may not use a CMV unless each component identified in Appendix A to Part 396, Code of Federal Regulations, “Minimum Periodic Inspection Standards,” has passed the required annual inspection. While the FMCSRs have required rear impact guards for more than 65 years, they have not been included on the list of components in Appendix G that must be inspected during the annual CMV inspection. This means that a vehicle can pass an annual inspection with a missing or damaged rear impact guard.

In response to petitions from the Commercial Vehicle Safety Alliance (CVSA) and Jerry and Marianne Karth (“the Karths”¹), a recommendation included in GAO Report GAO-19-264, “Truck Underride Guards: Improved Data Collection, Inspections, and Research Needed,”² and Congressional correspondence,³ this final rule amends the

¹ Copies of the petitions from CVSA and the Karths are available online at <https://www.regulations.gov/docket?D=FMCSA-2019-0211> and in Dockets Operations.

² A copy of the GAO Report is available in the docket for this final rule.

³ A copy of the letter is in the docket for this final rule.

FMCSRs to include rear impact guards on the list of items that must be examined as part of the required annual inspection for each CMV.

NHTSA published two final rules on November 19, 2004, relating to rear impact guards. First, NHTSA amended the labeling requirement in FMVSS No. 223, “Rear impact guards,” to permit the rear impact guard certification label to be mounted on either the forward- or rearward-facing surface of the horizontal member of the guard, provided the label does not interfere with the retroreflective sheeting required by the FMVSS (69 FR 67660).⁴ Prior to the amendment, the certification label was required to be mounted on the forward-facing surface of the horizontal member, 12 inches inboard of the right end of the guard. Second, NHTSA amended the applicability section of FMVSS No. 224, “Rear impact protection,” to exclude RCC horizontal discharge semitrailers from the requirements of the standard (69 FR 67663).⁵ NHTSA concluded that installation of rear impact guards on RCC horizontal discharge trailers would interfere with the intended function of the trailers and was therefore impracticable due to the unique design and purpose of those vehicles. However, neither of NHTSA’s November 2004 amendments to the FMVSS was incorporated into the corresponding rear impact requirements in section 393.86 of the FMCSRs. FMCSA amends the FMCSRs to adopt the changes above to maintain consistency with FMVSS Nos. 223 and 224.

This final rule does not result in incremental costs or benefits beyond the baseline established in the FMCSRs. Although rear impact guards are not currently among the items that must be examined during annual inspections, 49 CFR 393.86 requires that certain CMVs operated in interstate commerce be equipped with the devices, and 49 CFR

⁴ You may view the NHTSA rule online at <https://www.federalregister.gov/documents/2004/11/19/04-25704/federal-motor-vehicle-safety-standards-rear-impact-guard-labels>.

⁵ RCC horizontal discharge trailers are used in the road construction industry to deliver asphalt to construction sites and gradually discharge asphalt mix into the paving machines overlaying the road surface. Federal Motor Vehicle Safety Standards; Rear Impact Guards; Final Rule, 69 FR 67663 (Nov. 19, 2004). You may view the NHTSA rule online at <https://www.federalregister.gov/documents/2004/11/19/04-25703/federal-motor-vehicle-safety-standards-rear-impact-guards-final-rule>.

396.3(a) requires that parts and accessories, including rear impact guards, remain in safe and proper operating conditions at all times. Therefore, for the purposes of assessing the economic impact of this final rule on motor carriers, the Agency assumes compliance as part of the baseline established by the existing FMCSRs in section 393.86. Neither the labeling requirements resulting from this final rule, nor the exclusion of RCC horizontal discharge semitrailers from these requirements, will result in incremental costs or benefits.

III. LEGAL BASIS FOR THE RULEMAKING

This rulemaking is based on the authority of the Motor Carrier Act of 1935 (1935 Act) and the Motor Carrier Safety Act of 1984 (1984 Act). The 1935 Act, as amended, provides that “[t]he Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a private motor carrier, when needed to promote safety of operation” (49 U.S.C. 31502(b)). This final rule amends the FMCSRs to respond to petitions for rulemaking. The adoption and enforcement of such rules is specifically authorized by the 1935 Act. This final rule rests squarely on that authority.

The 1984 Act provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to “prescribe regulations on commercial motor vehicle safety.” The regulations shall prescribe minimum safety standards for CMVs. At a minimum, the regulations shall ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate vehicles safely; (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators; and (5) drivers are not coerced by motor carriers, shippers, receivers, or

transportation intermediaries to operate a vehicle in violation of a regulation promulgated under 49 U.S.C. 31136 (which is the basis for much of the FMCSRs) or 49 U.S.C. chapters 51 or 313 (49 U.S.C. 31136(a)(5)).

This final rule concerns parts and accessories necessary for the safe operation of CMVs, and the inspection, repair, and maintenance of CMVs. It is based on section 31136(a)(1) because it deals with CMV maintenance of rear impact guards. The final rule does not address the driver-centered requirements of sections 31136(a)(2)-(4). As the amendments adopted by this final rule are primarily technical changes that clarify existing requirements and improve enforcement consistency, FMCSA believes there will be stakeholder support for this initiative and that coercion to violate the amendments, which is already prohibited by section 31136(a)(5), will not be an issue.

Before prescribing any such regulations, FMCSA must consider the “costs and benefits” of any proposal (49 U.S.C. 31136(c)(2)(A) and 31502(d)). As discussed in greater detail in the “Regulatory Analyses” section, FMCSA has determined that this final rule is not a significant regulatory action.

IV. BACKGROUND

A. History of Rear Impact Guard Requirements

The first Federal requirements concerning heavy vehicle rear underride protection were issued in 1952 by the Bureau of Motor Carriers of the Interstate Commerce Commission (ICC). The regulation required all heavy trucks, trailers, and semitrailers manufactured after December 31, 1952, to be equipped with a rear-end protection device designed to help prevent underride. The rule required that the ground clearance of the underride guard be no more than 30 inches when the vehicle is empty. The rule also required that the underride guard be located no more than 24 inches forward of the rear of the vehicle and extend laterally to within 18 inches of each side. The underride device was required to be “substantially constructed and firmly attached” (17 FR 4445, May 15,

1952). The ICC's authority over motor carrier safety was transferred to DOT by Section 6(e)(6)(C) of the Department of Transportation Act (Pub. L. 89-670, 80 Stat. 931, 939-940, Oct. 15, 1966). The authority was delegated by the Secretary to the Federal Highway Administration (FHWA).

NHTSA was established in 1970 and authorized to prescribe safety standards for motor vehicles and motor vehicle equipment in interstate commerce, i.e., the FMVSS applicable to vehicle and equipment manufacturers. On January 24, 1996, NHTSA published a final rule creating FMVSS Nos. 223 and 224 (61 FR 2004). The requirements apply to most trailers and semitrailers with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or more, manufactured on or after January 26, 1998.

FMVSS No. 223 specifies requirements that rear impact guards must meet before they can be installed on new trailers or semitrailers. It specifies strength and energy absorption requirements, as well as test procedures that manufacturers and NHTSA will use to determine compliance with the standard. The standard also requires the guard manufacturer to permanently label the impact guard to certify that it meets the requirements, and to provide instructions on the proper installation of the guard.

FMVSS No. 224 requires that most new trailers and semitrailers with a GVWR of 4,536 kg (10,000 pounds) or more be equipped with a rear impact guard meeting the requirements of FMVSS No. 223. The guards must extend laterally to within 4 inches of the sides of the trailer, have a ground clearance of no more than 22 inches, and be placed as close as possible to, but not more than 12 inches from, the rear of the vehicle. To ensure that the guard will perform properly, the standard also requires it to be mounted on the trailer or semitrailer in accordance with the installation instructions provided by the guard manufacturer.

On September 1, 1999, FHWA published a final rule amending the FMCSRs to require trailers and semitrailers manufactured on or after January 26, 1998, with a

GVWR of 4,536 kg (10,000 pounds) or more, be equipped with rear impact guards that meet the requirements of FMVSS No. 223. The rear impact guards must be installed to ensure that the trailer or semitrailer meets the rear end protection requirements of FMVSS No. 224. This rule was intended to ensure that the rear impact protection requirements of the FMCSRs are consistent with the FMVSS (64 FR 47703).

As stated previously, NHTSA published two final rules on November 19, 2004, relating to rear impact guards. NHTSA amended the labeling requirement in FMVSS No. 223 to permit the rear impact guard certification label to be mounted on either the forward- or rearward-facing surface of the horizontal member of the guard (69 FR 67660), and amended the applicability section of FMVSS No. 224 to exclude RCC horizontal discharge semitrailers from the requirements of the standard (69 FR 67663). However, neither of NHTSA's November 2004 amendments to the FMVSS was incorporated into the corresponding rear impact requirements in section 393.86 of the FMCSRs.

B. History of Appendix A Requirements

Section 210 of the 1984 Act required the Secretary of Transportation to establish standards for the annual or more frequent (i.e., periodic) inspection of all CMVs engaged in interstate or foreign commerce (49 U.S.C. 31142(b)). In response, FHWA adopted new section 396.17 on December 7, 1988, which requires all CMVs to be inspected at least once every 12 months (53 FR 49380, as amended on Dec. 8, 1989 (54 FR 50722)). In establishing specific criteria for the newly required annual inspection, FHWA looked to inspection criteria that had been developed based on the specifications in part 393, notably (1) the CVSA vehicle out-of-service criteria and (2) the vehicle portion of the FHWA National Uniform Driver-Vehicle Inspection Procedure (NUD-VIP). FHWA decided to use the vehicle portion of the NUD-VIP as the criteria for successful completion of the annual inspection, and in the December 1988 rule, established

Appendix G to the FMCSRs as the minimum periodic inspection standards for § 396.17. FHWA noted that utilization of the FHWA NUD-VIP would (1) provide the necessary inspection-related pass/fail criteria for the periodic inspection at a more stringent level than the vehicle out-of-service criteria, and (2) provide the proper level of Federal oversight in establishing and revising the criteria. On October 14, 2021, the final rule titled, “Federal Motor Carrier Safety Regulations; General Technical, Organizational, Conforming, and Correcting Amendments” (86 FR 57060) redesignated Appendix G to Subchapter B of Chapter III as Appendix A to Part 396.

V. DISCUSSION OF PROPOSED RULEMAKING AND COMMENTS

A. Background and Proposed Rulemaking

Rear Impact Guards in Appendix A⁶. In its petition, CVSA requested that the Agency amend Appendix G to include specific language regarding the inspection of rear impact guards during annual inspections. The petition stated:

A vehicle’s rear impact guard/rear end protection is inspected roadside as part of the North American Standard Inspection Program. However, the majority of commercial motor vehicles do not come into contact with an inspector on an annual basis....

According to data available through FMCSA’s Analysis and Information Online webpage, in fiscal year 2017 inspectors document[ed] more than 2,300 violations related to rear impact guards and rear end protection, more than half of which are for components that are missing, damaged or improperly constructed. Including rear impact guards and rear end protection in the periodic inspection requirements in Appendix G will call additional attention to this critical safety component and help ensure that each vehicle is checked at least once a year, improving compliance and helping to prevent fatalities and injuries when rear-end collisions occur. Furthermore, including rear impact guards and rear end protection in the periodic annual inspection standards will harmonize U.S. regulations with those in Canada and Mexico, which include rear impact guards and rear end protection as part of their annual inspection programs.

⁶ At the time of the petitions for rulemaking, the GAO report, and publication of the NPRM, Appendix A to Part 396 was codified as Appendix G to Subchapter B of Chapter III. Therefore, those petitions and the comments on the NPRM refer to Appendix G. However, this final rule discusses them as referring to Appendix A.

The Karths’ petition requested that FMCSA “[a]dd underride guards to Appendix [A] and 396.17 (Periodic Inspection).”

In addition, several Senators asked GAO to review data on truck underride crashes and information on underride guards. Between January 2018 and March 2019, GAO conducted a performance audit that included a literature review and interviews with stakeholders familiar with underride crashes and guards.

GAO Report GAO-19-264, published in March 2019, examines (1) the data that DOT reports on underride crashes, and (2) the development and use of underride guard technologies in the United States. GAO analyzed DOT’s underride crash data for 2008 through 2017; reviewed NHTSA’s proposed regulations and research on new guard technologies (80 FR 78418, Dec. 16, 2015); and interviewed stakeholders including DOT officials, industry and safety groups, and State officials.

With respect to FMCSA, GAO concluded that the lack of an annual inspection requirement for rear impact guards potentially affects the safety of the traveling public and FMCSA’s ability to achieve its safety mission. GAO stated that “without explicitly including the inspection of the rear guard in Appendix G, there is no assurance that rear guards in operation will be inspected at least annually to ensure they perform as designed to prevent or mitigate an underride crash.” In its “Recommendations for Executive Action,” GAO stated:

The Administrator of the Federal Motor Carrier Safety Administration should revise Appendix [A] of the agency’s regulations to require that rear guards are inspected during commercial vehicle annual inspections. (Recommendation 3)

While the GAO review was being conducted, a group of Senators urged the Agency to “add ‘underride guards’ to the list of annual inspection items required [for] trucks and trailers under current periodic inspection regulations.” The Senators stated:

Requiring an annual inspection of rear underride guards, in addition to the current list of items already checked during annual inspections, would ensure trucks and trailers are complying with regulations already on the books. Therefore, we ask that FMCSA consider initiating a rulemaking to amend federal Minimum Periodic

Inspection Standards to include a subsection on “underride guards.” Should you decide to move forward with this rulemaking, we respectfully request that an inserted subsection be identical to the already mandated minimum standards of rear impact guards and rear end protection.

FMCSA published a notice of proposed rulemaking (NPRM) on December 29, 2020 (85 FR 85571). In the NPRM, FMCSA proposed to amend then Appendix G to Subchapter B of Chapter III, now Appendix A to Part 396, “Minimum Periodic Inspection Standards,” by adding rear impact guards to the list of items required to be inspected pursuant to § 396.17 as part of the required annual inspection for each CMV. FMCSA proposed to amend § 393.86(a)(6) to clarify that the certification label may be on the forward- or rear-facing surface of the horizontal member of the guard, provided it does not interfere with the retroreflective sheeting required by the FMVSS. FMCSA also proposed to amend (1) § 393.5 to add a definition of *road construction controlled horizontal discharge trailer* consistent with the NHTSA definition in FMVSS No. 224, and (2) §§ 393.86(a)(1) and 393.86(b)(1) to make it clear that RCC horizontal discharge trailers are not required to have a rear impact guard installed, consistent with the amendments made by NHTSA in 2004.

Although neither of NHTSA’s November 2004 amendments had been incorporated into the rear impact requirements in section 393.86, FMCSA stated in the NPRM that it was not aware of any enforcement or compliance issues with respect to these items in the ensuing 15 years. As such, FMCSA stated that it did not expect the proposed amendments to have any impact on motor carriers.

B. Comments and Responses

FMCSA solicited comments to the NPRM for a 60-day period, ending on March 1, 2021. The Agency received a total of 23 comments from the following parties: the Academy of Truck Accident Attorneys, Advocates for Highway and Auto Safety, the American Trucking Associations (ATA), the CVSA, the Institute for Safer Trucking, the Law Firm for Truck Safety, the Owner-Operator Independent Drivers Association

(OOIDA), the National Association of Trailer Manufacturers (NATM), the National Automobile Dealers Association (NADA), the Truck Trailer Manufacturers Association (TTMA), the Truckload Carriers Association, and 12 individuals (Lois Durso, Stephen Eimers, Cathy Forman, Mark Hawkins, Eric Hein, Jerry and Marianne Karth, Sulev Oun, Michael Poplaski, Roderick Throgmorton, and three anonymous commenters).

1. Rear Impact Guards in Appendix A All commenters supported the proposal to amend Appendix G to require rear impact guards to be inspected as part of the annual inspection required under section 396.17, and this rule adopts the amendments largely as proposed in the NPRM.

TTMA suggested alternative language from that proposed in the NPRM to clarify certain elements in Appendix A.

TTMA stated that the phrase “not securely attached” in the proposed 15.a.2 of Appendix A “is vague and insufficient to catch many unsafe, damaged or improperly repaired guards.” TTMA suggested that the inspection should not allow “broken or missing fasteners, cracked welds, corrosion that evidences any loss of original or parent material, bends that indicate prior impact damage not yet repaired, or asymmetrical repairs indicating the use [of] non-OEM approved components.”

FMCSA response: FMCSA agrees that the proposed language was somewhat broad, and – consistent with other sections of Appendix A – has amended the language of 15.a.2 to include examples of specific conditions that could constitute “not securely attached.” FMCSA emphasizes that the amended language is not an all-inclusive list, and that motor carriers will have discretion to determine that a guard is not securely attached (and thus, needs to be repaired/replaced) as a result of other conditions observed during the annual inspection.

TTMA stated that the phrase “and not beyond” in the proposed 15.a.3 of Appendix A “is vague and could refer to either ‘the side extremity of the trailer’ or to the

point 4 inches inboard.” To avoid confusion, TTMA suggested using the phrase “...and not beyond the side extremity of the trailer.”

FMCSA response: FMCSA agrees, and has amended the language of 15.a.3 to make it clear that the guard must extend to within 4 inches of the side extremity of the vehicle, but may not extend beyond the side extremity of the vehicle.

TTMA stated that the proposed language in 15.a.4-6 and 15.b.4-5 of Appendix A starts with “Guard,” and since the guard is the whole system including the uprights, horizontal member, and attachments, TTMA suggested that “Guard” should more appropriately be “Guard horizontal member” in these sections.

FMCSA response: FMCSA agrees, and has amended the language as suggested. (FMCSA notes that this applies to 15.a.3-6, as opposed to 15.a.4-6, and to 15.b.3-5, as opposed to 15.b.4-5, respectively).

2. Rear Impact Guard Labeling. Most commenters supported the NPRM proposal to amend the labeling requirements in § 393.86(a)(6) to be consistent with the changes made by NHTSA in 2004.

While ATA supported the proposed amendment to make the FMCSR labeling requirement consistent with the corresponding FMVSS labeling requirement, it noted support for a CVSA petition for rulemaking submitted to FMCSA requesting that the rear impact guard labeling requirement be removed from section 393.86(a)(6) of the FMCSRs. CVSA and NADA opposed the proposed amendment, and both recommended that FMCSA instead eliminate the labeling requirement.

FMCSA response: As noted in the NPRM, the proposal to amend the labeling requirement in section 393.86(a)(6) was simply an action to make the labeling requirement in the FMCSRs consistent with a change made to the corresponding FMVSS by NHTSA in 2004. While CVSA has submitted petitions for rulemaking to both FMCSA and NHTSA requesting elimination of the labeling requirement for rear impact

guards, FMCSA action on that petition is outside the scope of this rulemaking and will be addressed separately.

3. Applicability – RCC Horizontal Discharge Trailers. Most commenters supported the NPRM proposal to add a definition of *road construction controlled horizontal discharge trailer*, and to make it clear that RCC horizontal discharge trailers are not required to have a rear impact guard installed, consistent with the amendments made by NHTSA in 2004.

The Law Firm for Truck Safety opposed the proposal to exclude RCC horizontal discharge trailers from the requirement to have a rear impact guard, stating that “NHTSA is wrong to have amended the applicability section of FMVSS No. 224, ‘Rear impact protection,’ to exclude RCC horizontal discharge semitrailers from the requirements of the standard.” The commenter noted that there are rear impact guards on various trucks in Europe “that this rule making is attempting to exclude.”

FMCSA response: As noted in the NPRM, the proposal to exclude RCC horizontal discharge trailers from the requirement to have a rear impact guard installed was simply an action to make the applicability requirements in the FMCSRs consistent with those made via an amendment to the FMVSS made by NHTSA in 2004. Any action to remove RCC horizontal discharge trailers from the list of excluded vehicles in FMVSS No. 224 would have to be done by NHTSA through a notice and comment rulemaking proceeding and is outside the scope of this rulemaking.

4. Other comments. In addition to comments on the proposed amendments to Appendix A, labeling, and RCC horizontal discharge trailers, FMCSA also received comments regarding a wide range of other issues relating to underride protection, including (a) enhanced strength requirements for rear impact guards, (b) the lack of regulations for side underride protection, (c) rear impact protection for single unit trucks,

(d) the recommendations from the GAO Report, and (e) automatic emergency braking.

All these issues are outside of the scope of this rulemaking.

VI. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, U.S. territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

VII. SECTION-BY-SECTION ANALYSIS

A. Part 393 – Parts and Accessories Necessary for Safe Operation

§ 393.5 Definitions.

FMCSA amends this section by adding a definition of *Road construction controlled horizontal discharge trailer*.

§ 393.86(a)(1) General requirements for trailers and semitrailers manufactured on or after January 26, 1998.

FMCSA amends this section by adding RCC horizontal discharge trailers to the list of vehicles that are not required to have a rear impact guard.

§ 393.86(a)(6) Certification and labeling requirements for rear impact protection guards.

FMCSA amends this section to clarify that the label may be on the forward- or rear-facing surface of the horizontal member of the guard, provided it does not interfere with the retroreflective sheeting required by the FMVSS.

§ 393.86(b)(1) Requirements for motor vehicles manufactured after December 31, 1952 (except trailers or semitrailers manufactured on or after January 26, 1998).

FMCSA amends this section by adding RCC horizontal discharge trailers to the list of vehicles that are not required to have a rear impact guard.

B. Appendix A to Part 396 Minimum Periodic Inspection Standards

FMCSA amends Appendix A by adding rear impact guards to the list of items required to be inspected pursuant to § 396.17.

VIII. REGULATORY ANALYSES

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this final rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and DOT's regulatory policies and procedures. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this final rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, OMB has not reviewed it under that E.O.

In response to rulemaking petitions and a recommendation from the GAO, FMCSA amends Appendix G to Subchapter B of Chapter III in 49 CFR. This amendment adds rear impact guards to the list of items that must be examined as part of the required annual inspection for each CMV.

Section 393.86(a) currently requires most trailers and semitrailers manufactured on or after January 26, 1998, to be equipped with rear impact guards. This final rule does not require installation or maintenance of rear impact guards beyond the current requirements in section 393.86.

This final rule does not result in incremental costs or benefits beyond the baseline established in the FMCSRs. As required by 49 CFR 396.17, motor carriers currently complete annual inspections of all items identified in Appendix G. FMCSA assumes that

motor carriers currently review rear impact guards in their annual inspection programs to remain in compliance with the current requirements in 49 CFR 396.3(a)(1), which states that parts and accessories, including rear impact guards, must be in safe and proper operating conditions at all times. Additionally, CMVs are subject to inspections conducted in accordance with the CVSA's North American Standard Inspection Program that may occur throughout the year, which include the examination of rear impact guards. According to data contained in the Motor Carrier Management Information System (MCMIS), most motor carriers comply with 49 CFR 396.3(a)(1). Specifically, there were approximately 2.1 million vehicle roadside inspections conducted in the United States in 2019, and there were approximately 3.1 million vehicle violations cited during those inspections. Only 3,189 – or about 0.103 percent – were rear impact guard violations.⁷

FMCSA also makes two minor changes to maintain consistency between the FMCSRs and NHTSA's FMVSS Nos. 223 and 224. As described above, these changes provide consistent labeling requirements and exclude RCC horizontal discharge semitrailers from the requirements of this standard. These administrative changes do not result in incremental impacts.

B. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801-808), the Office of Information and Regulatory Affairs designated this rule as not a "major rule."⁸

C. Regulatory Flexibility Act (Small Entities)

⁷ Data Source: MCMIS data snapshot as of 5/28/2021, including current year-to-date information for CY 2021. The data presented are accurate as of the date listed, but are subject to update as new or additional information may be reported to MCMIS following the snapshot date.

⁸ A "major rule" means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (49 CFR 389.3).

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 et seq.) requires Federal agencies to consider the effects of their regulatory actions on small businesses and other small entities and to minimize any significant economic impact. The term *small entities* comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Small entity is defined in 5 U.S.C. 601(3) as having the same meaning *small business concern* under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated and is not dominant in its field of operation. Section 601(4), likewise, includes within the definition of “small entities” not-for-profit enterprises that are independently owned and operated and are not dominant in their fields of operation. In addition, Section 601(5) defines *small entities* as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. The Small Business Administration develops the size standards used to classify entities as small, and establishes separate standards for each industry, as defined by the North American Industry Classification System. The motor carriers affected by this final rule fall into many different industry codes with differing size standards. Because this final rule impacts all motor carriers, including those considered to be small entities, this rule will impact a substantial number of small entities.

However, FMCSA has determined that this final rule does not have a significant impact on the affected entities. This final rule requires motor carriers to include rear impact guards on the list of items that must be examined as part of the required annual CMV inspection. FMCSA believes that motor carriers have been inspecting the rear

impact guards on their CMVs to remain in compliance with requirements that have been in the FMCSRs since 1952. As such, this final rule does not have incremental impacts on the affected entities. The two minor changes to maintain consistency between the FMCSRs and NHTSA's FMVSS Nos. 223 and 224 do not result in incremental impacts. The impacts of this final rule are de minimis, and therefore, the final rule does not have a significant economic impact on a substantial number of small entities.

Consequently, I certify that the final rule does not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996,⁹ FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under FOR FURTHER INFORMATION CONTACT.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see <https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman>) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy

⁹ Pub. L. 104-121, 110 Stat. 857, (Mar. 29, 1996).

regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$170 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2020 levels) or more in any one year. Though this final rule would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This final rule contains no new information collection under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

G. Executive Order 13132 (Federalism)

A rule has implications for federalism under Section 1(a) of Executive Order 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” FMCSA determined that this final rule does not have substantial direct costs on or for States, nor does it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005,¹⁰ requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This rule would not require the collection of personally identifiable information (PII).

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002,¹¹ requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

In addition, the Agency submitted a Privacy Threshold Assessment to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The DOT Privacy Office has determined that this rulemaking does not create privacy risk.

I. Executive Order 13175 (Indian Tribal Governments)

This final rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

J. National Environmental Policy Act of 1969

FMCSA analyzed this final rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and determined this action is categorically excluded

¹⁰ Pub. L. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

¹¹ Pub. L. 108-447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph (aa). The Categorical Exclusion (CE) in paragraph (aa) covers regulations requiring motor carriers, their officers, drivers, agents, representatives, and employees directly in control of CMVs to inspect, repair, and provide maintenance for every CMV used on a public road. The requirements adopted in this rule are covered by this CE and the final rule does not have any effect on the quality of the environment.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA amends 49 CFR Part 393 and Appendix G to Subchapter B of Chapter III as follows:

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

1. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. 31136, 31151, and 31502; sec. 1041(b) of Pub. L. 102-240, 105 Stat. 1914, 1993 (1991); sec. 5301 and 5524 of Pub. L. 114-94, 129 Stat. 1312, 1543, 1560; and 49 CFR 1.87.

2. Amend § 393.5 by adding a definition for *Road construction controlled horizontal discharge trailer* in alphabetical order to read as follows:

§ 393.5 Definitions

* * * * *

Road construction controlled horizontal discharge trailer means a trailer or semitrailer that is equipped with a mechanical drive and a conveyor to deliver asphalt and other road building materials, in a controlled horizontal manner, into a lay down machine or paving equipment for road construction and paving operations.

* * * * *

3. In § 393.86 revise paragraphs (a)(1), (a)(6) introductory text, and (b)(1) introductory text to read as follows:

§ 393.86 Rear impact guards and rear end protection

(a)(1) *General requirements for trailers and semitrailers manufactured on or after January 26, 1998.* Each trailer and semitrailer with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or more, and manufactured on or after January 26, 1998, must be equipped with a rear impact guard that meets the requirements of Federal Motor Vehicle Safety Standard No. 223 (49 CFR 571.223) in effect at the time the vehicle was manufactured. When the rear impact guard is installed on the trailer or semitrailer, the vehicle must, at a minimum, meet the requirements of FMVSS No. 224 (49 CFR 571.224) in effect at the time the vehicle was manufactured. The requirements of paragraph (a) of this section do not apply to pole trailers (as defined in § 390.5 of this chapter); pulpwood trailers, low chassis vehicles, special purpose vehicles, wheels back vehicles, and road construction controlled horizontal discharge trailers (as defined in § 393.5); and trailers towed in driveaway-towaway operations (as defined in § 390.5).

* * * * *

(6) *Certification and labeling requirements for rear impact protection guards.*

Each rear impact guard used to satisfy the requirements of paragraph (a)(1) of this section must be permanently marked or labeled as required by FMVSS No. 223 (49 CFR 571.223, S5.3). The label shall be placed on the forward or rearward facing surface of the horizontal member of the guard, provided that the label does not interfere with the retroreflective sheeting required by S5.7.1.4.1(c) of FMVSS No. 108 (49 CFR 571.108), and is readily accessible for visual inspection. The certification label must contain the following information:

* * * * *

(b)(1) *Requirements for motor vehicles manufactured after December 31, 1952 (except trailers or semitrailers manufactured on or after January 26, 1998).* Each motor vehicle manufactured after December 31, 1952, (except truck tractors, pole trailers, pulpwood trailers, road construction controlled horizontal discharge trailers, or vehicles in driveway-towaway operations) in which the vertical distance between the rear bottom edge of the body (or the chassis assembly if the chassis is the rearmost part of the vehicle) and the ground is greater than 76.2 cm (30 inches) when the motor vehicle is empty, shall be equipped with a rear impact guard(s). The rear impact guard(s) must be installed and maintained in such a manner that:

* * * * *

PART 396 – INSPECTION, REPAIR, AND MAINTENANCE

4. The authority citation for part 396 continues to read as follows:

Authority: [49 U.S.C. 504, 31133, 31136, 31151, 31502](#); sec. 32934, [Pub. L. 112-141](#), 126 Stat. 405, 830; sec. 5524, [Pub. L. 114-94](#), 129 Stat. 1312, 1560; and [49 CFR 1.87](#).

5. Amend Appendix A to Part 396 by adding Section 15 to read as follows:

Appendix A to Part 396 – Minimum Periodic Inspection Standards

* * * * *

15. Rear Impact Guard

a. Trailers and semitrailers with a GVWR of 4,536 kg (10,001 lbs.) or more, manufactured on or after January 26, 1998 (see exceptions in § 393.86(a)(1)).

1. Missing guard.

2. Guard is not securely attached to trailer, including broken or missing fasteners, any welds or parent metal cracked, or other damage that compromises secure attachment of the guard.

3. Guard horizontal member does not extend to within 100 mm (4 inches) of each, or extends beyond either, side extremity of the vehicle.

4. Guard horizontal member is more than 560 mm (22 inches) above the ground.
 5. Guard horizontal member is more than 305 mm (12 inches) forward of the rear extremity of the vehicle.
 6. Guard horizontal member does not have a cross sectional vertical height of at least 100 mm (4 inches) across its entire width.
- b. Commercial motor vehicles manufactured after December 31, 1952 (except trailers and semitrailers manufactured on or after January 26, 1998) (see exceptions in § 393.86(b)(1) and § 393.86(b)(3)).
1. Missing guard.
 2. Guard is not securely attached to trailer by bolts, welding, or other comparable means.
 3. Guard horizontal member is more than 762 mm (30 inches) above the ground.
 4. Guard horizontal member does not extend to within 457 mm (18 inches) of each side extremity of the vehicle.
 5. Guard horizontal member is more than 610 mm (24 inches) forward of the rear extremity of the vehicle.

Issued under authority delegated in 49 CFR 1.87.

Meera Joshi
Deputy Administrator.